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A

DEF NOTICE

OF THE

RECENT OUTRAGES

COMMITTED BY

ISAAC I. STEVENS,

GOVERNOR OF

WASHINGTON TERRITORY.

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The Suspension of the Writ of Habeas Corpus—the Breaking up  
of Courts, and the Kidnapping of Judges and Clerks.  
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OLYMPIA, MAY 17, 1856.

manuscript?

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A BRIEF NOTICE

OF THE

RECENT OUTRAGES IN WASHINGTON TERRITORY.

In the latter part of the month of March, 1856, Lion A. Smith, Charles Wren, Henry Smith, John McLeod, John McField, Henry Murry and ——— Wilson, American citizens, residents of the County of Pierce, and Territory of Washington, were arrested upon their several land claims, in that county, by a detachment of volunteers under orders of Isaac I. Stevens, Governor of said Territory, without process of law, and without any complaint or affidavit being lodged against them, charging them with the commission of any offence against the law. They were taken by a guard to the town of Olympia, the capitol of the Territory, detained there over night, and then sent in custody of a guard to the U. S. Military Post at Fort Steilacoom, with a *written* request of Governor Stevens to Lieut. Col. Casey, U. S. Army, commanding that post, to retain said prisoners in *close confinement*, upon a charge of *treason*. In the early part of April, William H. Wallace and Frank Clark, attorneys at law, of counsel for said prisoners, started for Penn's Cove, Whidby's Island, a distance of a hundred miles, the residence of Hon. F. A. Chenoweth, U. S. District Judge of the Third Judicial District of Washington Territory, to make application for the writ of *habeas corpus*, to test the legality of such imprisonment. The Governor having learned of this mission of justice and mercy, issued a proclamation, *without seal*, bearing date April 30, 1856, and in the following language:

"Whereas, In the prosecution of the Indian war, circumstances have existed affording such grave cause of suspicion, that certain evil disposed persons of Pierce County, have given aid and comfort to the enemy, as that they have been placed under arrest and ordered to be tried by a military commission: *And whereas*, efforts are now being made to withdraw, by civil process, these persons from purview of the said commission;

"Therefore, as the war is now being actively prosecuted throughout nearly the whole of the said county, and great injury to the public, and the plans of the campaign be frustrated, if the alleged designs of these persons be not arrested; I, Isaac I.

Stephens, Governor of the Territory of Washington, do hereby proclaim MARTIAL LAW over the said county of Pierce, and do by these presents suspend for the time being, and till further notice, the functions of all civil officers in said county.

"Given under my hand at Olympia, this third day of April, eighteen hundred and fifty-six, and the year of Independence of the United States the eightieth. ISAAC I. STEVENS."

On being apprised of this proclamation, Col. Casey informed the Governor, that notwithstanding its issue, were a writ of *habeas corpus* served upon him, he would feel compelled to obey its mandates; upon this, the Governor removed said prisoners again to Olympia, *out of the county*, where he pretended to hold them by the martial law he had proclaimed. In the meantime, his honor, Judge Chenoweth, had issued a writ of *habeas corpus*, and unaware of the existence of the proclamation. It is not our purpose to criticise the *intention* of the Governor, to defeat the service of a writ *after* the arrest of parties, defying, as it does, the wholesome spirit of that section of the Constitution which prohibits the enactment of *ex post facto* laws, for we have learned to our mortification, that Constitutions are nothing, law is idle, the *will* of the Governor is *supreme*. But we do boldly maintain the position that if his proclamation of martial law was based upon public necessity, urgently demanded for the public welfare, the great writ of *right* still stood exempt from its reach, and paramount to its operation. Truth compels us, however, to deny that the proclamation was necessary, and we need only refer to the document itself to sustain our position. The preamble to said proclamation recites that "*the suspected parties were in custody*," their evil designs, had they any, had been thwarted, and they were now in a position that they could no longer "frustrate the campaign." Nor does it appear that any effort was made to rescue the prisoners by force; nothing is alleged, save that by counsel, they attempted to secure what the national Constitution guarantees to every citizen.

The writ of *habeas corpus* issued by order of Judge Chenoweth never was served, because the prisoners had been transferred by Gov. Stevens out of Judge Chenoweth's district.

Nothing further was done until the first Monday in May, 1856, when by a law of this Territory, the term of the District Court for the County of Pierce, was to be holden. We quote from the statement made by the bar of that district, the detail of the outrages committed by the Executive during that week: "The United States Judge, assigned to this Judicial District, being detained at home by severe illness, at the time when by

law the term of the District Court was to be held, the Hon. Edward Lander, Chief Justice of this territory, who resides in the adjoining district, at the special written request of Hon. Judge Chenoweth, undertook to hold said court, and on Monday the 5th May inst., arrived at Steilacoom and opened the Court in due form. Having been informed, however, on his way to the Court by Lieut. Col. B. F. Shaw, commanding a volunteer force under authority of the Governor of this territory, that if he attempted to hold said Court, he would be forcibly prevented. Judge Lander, in order to prevent a collision between executive and judicial authority, suggested that he would simply open and adjourn the Court until Wednesday, that the Governor might be advised to withdraw his proclamation.

"About three days previous to opening court, Col. Shaw, commanding the volunteer forces, who had received written instructions from Gov. Stevens to enforce martial law until further orders, being directed at the same time to inform him immediately if in his opinion it was no longer necessary, had written by express to the Governor, stating that no occasion existed in the county for its continuance, informing him that important business was to be transacted before the court, and recommended that in consequence, the proclamation be abrogated. Judge Lander, now himself, wrote to Governor Stevens, informing him of the course he had taken; that there were important causes to be tried before the court, one of which, the suit of the U. S. *vs.* The Former Collector of Puget Sound, ought to be tried; that there was imminent danger of a collision between the civil authorities and the military, and recommending that martial law be at once abrogated, especially as the present condition of the county seemed not to require it.

"In reply, Governor Stevens, on the 6th inst., while declining to withdraw his proclamation, suggested that Judge Lander adjourn his court to the first Monday in June, and informed him that he had examined the law, and found no difficulty in his adjourning from any time to the next term of court.

"Upon the receipt of this information, Judge Lander having done his duty as a citizen, in endeavoring to prevent the expected collision, proceeded to fulfill those of his judicial office by opening court at the appointed time, accompanied by the Clerk, U. S. Deputy Marshal and Sheriff; he went to the court house, opened the court by proclamation in usual form, and caused the Grand Jury to be impaneled and sworn. During this time a company of volunteers, (many of them citizens of Oregon, although enrolled in this territory,) drawn from Clark County, on the Columbia river, entered the court room with loaded

rifles and drew up without the bar, another company was kept in reserve without, to assist them if necessary. Judge Lander then directed the Deputy Marshal to prevent the entry of any armed men within the bar, but the commanding officer having announced that he acted under orders from Governor Stevens, directed his men to arrest the Judge and Clerk. In obedience to that order they entered the bar, the Deputy Marshal being unable to prevent it, and arrested the Judge in his seat; the Judge stating that he only succumbed to force, and declined calling upon the *posse comitatus*, because he wished to avoid bloodshed. Judge Lander and the Clerk, J. M. Chapman, were then removed by the military from the court house, and on the same day taken out of the county, and carried to Olympia. The records of the court, which were at first seized, were subsequently returned to the deputy clerk.

"During this time the citizens present, though manifesting a deep feeling of indignation at the transaction, refrained from any disorderly or violent acts. The conduct of Judge Lander was, throughout, dignified, firm and worthy of his high position, and was, we are satisfied, dictated only by a strict sense of duty."

On reaching Olympia, the Chief Justice and Clerk were not placed in confinement, though the former was not officially notified of his release till the 9th inst., and the Clerk on the 10th inst.

On Monday the 12th of May, the District Court of the Second Judicial District commenced, over which Chief Justice Lander presides, and he proceeded to the discharge of that duty.

During that day, John McLeod, Henry Smith and John McField, three of the parties arrested in Pierce County, petitioned the Judge, at Chambers, for a writ of habeas corpus to be directed to Isaac I. Stevens, Governor, &c., to bring them and their fellow prisoners before the Chief Justice, at Chambers, on Wednesday ensuing. This writ was placed in the hands of the U. S. Marshal and duly served the same day at 7, P. M. *Under cover of that night* proclamations of martial law over the County of Thurston were posted up, and here is a copy of the remarkable instrument:

PROCLAMATION.

Whereas, In the prosecution of the existing Indian war, it became necessary, for the reasons set forth in the proclamation of the Governor of the Territory of Washington, of the 3d of April, to proclaim martial law in and through Pierce County, in

said territory: *And whereas*, the same efforts are now being made in the County of Thurston by the issue of the writ of habeas corpus, to take from the purview of the military commission, which is ordered to convene on the 20th instant, certain persons charged with giving aid and comfort to the enemy: *And whereas*, an overruling public necessity leaves no alternative but to persist in that trial in order that the military operations be not rendered abortive, and the lives of the citizens needlessly sacrificed;

Therefore I, Isaac I. Stevens, Governor of the Territory of Washington, do by these presents proclaim *martial law* in and throughout the County of Thurston, and do call upon all good citizens to see that *martial law* is enforced.

Given under my hand at Olympia, this 13th day of May, in the year of our Lord one thousand eight hundred and fifty-six, and the year of Independence the eightieth.

ISAAC I. STEVENS.

On the morning of the 13th May, a company of volunteers rode into town, armed and equipped as the law directs, with no other motive than, as is supposed, to help "good citizens see that martial law be enforced," and to remove a portion of the prisoners out of the County of Thurston. A cannon was drawn up in front of the court house. On this day the Governor did not attempt to interrupt the court, though his "guards" were seated in front of the *executive office*, and paraded occasionally up and down the pavement before the building wherein the court was held.

Wednesday, May 14th.—At the time for the return of the writ, the Governor was respectfully notified that the Judge was at Chambers, and prepared to receive his returns to the writ of habeas corpus. Refusing to come, he pleaded to the Marshal that martial law had been proclaimed, and it suspended process. Petitioners' counsel then asked for a rule returnable the next day at 12, M., upon the Governor, to show cause why an attachment should not issue for contempt.

Thursday, May 15th, 1, P. M.—The Governor failing to appear and make return to the writ, on motion of petitioners' counsel, rule made absolute, and a writ of attachment issued to bring Isaac I. Stevens before the Hon. Edward Lander, Chief Justice, to answer for a contempt in refusing to make return to the writ of habeas corpus. The Governor *forcibly resisted* the service of this writ, and dispatched a company of volunteers, (from the Territory of Oregon,) commanded by Capt. Bluford Miller, to the house wherein Judge Lander was sitting at Chambers, and, the Marshal being ordered to keep the room

clear of armed men, was compelled to lock the door. While the Marshal was engaged in making a return to the writ, and the Judge in making the order for an alias writ of attachment, Capt. Miller called upon the Judge to *surrender*. In the meantime the house was surrounded by armed men. The counsel engaged inside could distinctly hear the men cocking their rifles. The Judge in this trying moment remained firm, cool and dispassionate, and finally, the door was forced open by the soldiers, the room was filled with armed men, and the Chief Justice, together with Elwood Evans, acting clerk of the U. S. District Court, of the Second Judicial District, was siezed and taken down to the executive office. In the presence of a large crowd, Chief Justice Lander was offered his liberty on condition of his "giving his honor that he would not hold any court or issue any further process, until the proclamation of martial law was revoked." This offer was made by Capt Miller, who stated that he did it by the instruction of the Governor. Justice to Judge Lander requires that we should give his dignified and manly reply. "Tell Governor Stevens for me, that I will not promise not to do what the law requires at my hand; say to him that I will do my whole duty, and I trust he will do his as well." On this answer he was taken into custody and carried out to camp Montgomery, out of the County of Thurston, out of his Judicial District, pending a regular term of Court—the Grand Jury being yet in session, important cases undisposed of, and much unfinished business on the docket,—making the second time which Governor Stevens has interrupted the Courts, and *kidnapped* the Court and its clerk. The clerk was then unconditionally released.

The above is a plain unvarnished statement of the facts of the case, and on them we base the following charges against Gov. Stevens, with our reasons for so doing:

I.—*He has violated his oath of office, which INTER ALIA, was to support the Constitution of the United States.*

1. In this, that he has attempted to suspend the writ of habeas corpus, which, by said Constitution can only be suspended by Congress, and then only in cases of invasion and rebellion, when the public safety require it.—*Vide Cons. U. S. Art. i. Sec. 9.*

2. In this, that he has arrested citizens, and deprived them of their liberty without process of law.—*Vide Cons. U. S. Art. v. Amendments.*

3. In this, that he has held persons to answer for an infamous and capital crime without any complaint or charge being pre-

ferred against them, and without a presentment or indictment of a Grand Jury being made.—*Vide Cons. of U. S. Art. v. Amendments.*

4. In this, that he has broken into houses of citizens without the issue of any warrant therefor, and seized persons and taken them into custody.—*Vide Cons. U. S. Art. iv. Amendments.*

5. In this, that he has deprived American citizens of the right of trial by jury of the district wherein the alleged crime was committed, and created a court of his own not known to or recognized by the law.—*Vide Cons. U. S. Art. iii. Sec. 2; id Art. vi. Amendments.*

6. In this, that he has charged men with committing *treason*, which is only cognizable by a United States Court, and ordered their trial by a tribunal of his own creation.—*Vide Cons. U. S. Art. iii. Sec. 3.*

7. In this, that he has defied and abrogated the supreme law of the land, rendered null and void the Constitution of the United States, and erected a military despotism with nothing to guide it but his own will.—*Vide Cons. U. S., Art. vi.*

II.—*He has acted in violation of the Organic Act creating the Territory of Washington.*

1. In this, that he has suspended the writ of habeas corpus. [See ordinance of 1787, which by Act of Congress, bearing date August 14th, 1848, entitled "An Act to establish the territorial government of Oregon," was extended in its application to what is now Washington Territory, and reaffirmed in the organic act of this Territory.]

2. In this, that he has deprived citizens of their liberty and property without process of law, and without compensation.—*Ibid.*

3. In this, that he has deprived citizens of the territory of a right of trial by jury.—*Ibid.*

III.—*He has violated and set at defiance the laws of Washington Territory.*

1. In this, that he has suspended and interrupted the terms of the District Courts of the Counties of Pierce and Thurston.—*Vide "An Act to define the judicial district of Washington Territory," Laws W. T., 1854, p. 448.*

2. In this, that he has held in custody persons not charged with any offence, and without a complaint filed.—*Vide Crim. Prac. Laws W. T., Ses. 1854, Passim.*

3. In this, that he has violated the provision of law whereby "Every person restrained of his liberty, under any pretence whatever, may prosecute a *writ of habeas corpus* to inquire into the causes of the restraint."—*Vide Sec. 434 "Of An Act to regulate the practice in civil actions," p. 212, Laws W. T., Ses. 1854.*

It may be proper here to pay a passing notice to the great writ of habeas corpus, to suspend which, the flagrant outrages herein enumerated against liberty, property, privilege, right, law and justice, have been perpetrated. This great writ, long the brilliant peculiarity of the British Constitution, received the royal assent of Charles II. of England, on the 26th of May, 1679. With it came the abolition of the Star Chamber, and the emancipation of the press. Personal liberty could not be sacrificed without a chance of investigation, and monarchy was indeed limited. History teaches that it was held sacred by our colonial ancestors, and, by their descendants, engrafted as one of the dearest personal rights upon our national constitution, the constitution and bill of rights of every state in the Union, upon the ordinance of 1787, and with it carried into every territorial government erected north and west of the Ohio. Eminent jurists and statesmen have written in its praise, and it may not be out of place to give some of those views.

The great Jefferson frequently declared himself upon this subject. He was in favor "of the eternal and unremitting force of the habeas corpus laws." On another occasion he inquires, "Why suspend the writ of *habeas corpus* in insurrections and rebellions? If the public safety requires that the government should have a man imprisoned on less probable testimony in those, than other emergencies, let him be taken and tried, *retaken* and *retried*, while the necessity continues, only giving him redress against the government for damages." And now stands out the glaring fact to the world, that never till the instance we now record, has the writ been suspended. One instance occurs, the Burr rebellion, when the suspension was asked for and the United States House of Representatives, though asked to pass said bill by no less a personage than the immortal Jefferson, refused so to do by the overwhelming vote of 113 to 19, and that too on a motion *to reject the bill*. It is idle to quote the commentaries of Kent, Story and others, on this interesting subject. The current of authority runs one way, all speak of it as the great writ of right grantable *ex merito justitiæ*, to the humblest citizen.

But one case is so apposite, presenting features so similar, that we cannot forbear to quote it at length. It is in the matter of

Samuel Stacy, Jr., and found reported at length in 10 Johnson's Reports, p. 327. Stacy was arrested on a charge of *treason*, by order of Commodore Chauncy, and by him had been delivered into the hands of Gen. Morgan Lewis, in command at Sackett's Harbor, in the month of July, 1813. On the 21st of July the writ of habeas corpus was issued, to which Gen. Lewis returned he was not in his custody; accompanying which was a return of the Provost Marshal, that he held such prisoner by the order of Gen. Lewis.

In discussing the question as to the propriety of issuing an attachment without first granting a rule to show cause why it should not issue for the *contempt* committed by Gen. Lewis, in thus making an evasive return, Chief Justice Kent says:

"This is a case which concerns the personal liberty of the citizen. Stacy is now suffering the rigor of confinement in close custody, at this unhealthy season of the year, at a military camp, and under military power. He is a natural born citizen residing in this state. He has a numerous family dependant upon him for their support. He is in bad health, and the danger of a protracted confinement to his health, if not to his life, must be serious. *The pretended charge of treason, (for upon the facts before us we must consider it a pretext,) without being founded upon oath, and without any specification of the matters of which it might consist, and without any color of authority in any military tribunal to try a citizen for that crime, IS ONLY AGGRAVATION OF THE OPPRESSION of the confinement.* It is the indispensable duty of this court, and one to which every inferior consideration must be sacrificed, to act as a faithful guardian of the personal liberty of the citizen, and to give ready and effectual aid to the means provided by law for its security. One of the most valuable of those means is this writ of habeas corpus, which has justly been deemed the glory of the English law, and the Parliament of England, as well as their courts of justice, have, on several occasions, and for the period, at least, of the two last centuries, shown the utmost solicitude, not only that the writ when called for should be issued without delay, BUT THAT IT SHOULD BE PUNCTUALLY OBEYED. (See Brown's Case, Cro. Zac. 543, and the Stat. of 16 Car. J. C. 10, S. 8.) Nor can we hesitate in promptly enforcing a due return to the writ, when we recollect that in this country *the law knows no superior*, and that in *England*, their courts have taught us, by a series of instructive examples, to exact the strictest obedience to whatever extent the persons to whom the writ is directed may be clothed with power, or exalted in rank. On ordinary occasions the attachment does not issue until after a rule to show cause; but

whether it shall or shall not issue in the first instance, must depend upon the sound discretion of the court under the circumstances of each particular case. It *may*, and it often *does*, issue in the first instance, without a rule to show cause, if the case be urgent or the contempt flagrant. On this point the authorities are sufficiently explicit.—*Rex vs. Jones*, *Stra.* 185; *Davies ex dem. Povey v. Doe* 2 *Bl. Rep.* 892; *Hawk. Tit. Attachment*, B. 2; C. 22, S. 1.

“If ever a case called for the most prompt interposition of the court to enforce obedience to its process, this is one. *A military commander is here assuming criminal jurisdiction over a private citizen*—is holding him in the closest confinement, and *contemning the civil authority of the state.*”

We will content ourselves with quoting one more authority. We read in Bouvier’s Law Dictionary, vol. i. p. 626 section 16—“The habeas corpus can be suspended only by authority of the legislature. The Constitution of the United States provides that the privilege of the writ of habeas corpus shall not be suspended unless when in cases of invasion or rebellion the public safety may require it. Whether this writ ought to be suspended depends on political considerations of which the legislature is to decide.—4 *Cranch* 101. The proclamation of a military chief, declaring martial law, *cannot therefore, suspend the operation of the law.*”—1 *Harr. Cond. Lo. Rep.* 157, 159; 3 *Mart. Lo. R.* 531.

Such then is the view we take of the gross outrage committed in attempting to suspend the writ of habeas corpus, and we can arrive at no other conclusion than that the Governor is a usurper, a tyrant and a despot.

The plea of ignorance in this case cannot avail him from these charges. “*Ignorantia legis neminem excusat.*” We assert that it was his duty to know principles at the basis of our free institutions. A school boy could not fail to know them, and for a Governor to be *so ignorant*, is at once to acknowledge his unfitness for so high a position.

Again, we charge him with culpable ignorance in asserting his determination to try, by a military commission, American citizens, either on a charge of giving *aid and comfort to the enemy*, (defined by the constitution and laws of the United States to be *treason*), or as his *vindication*, dated May 10th, which (see appendix) terms them *spies*. We accept the issue as tendered by that *vindication*, and publish it herewith, as corroborating all the material averments made by the bar in their statement, published May 7th, (which vide appendix.) The Governor in this vindication places himself in an unfortunate dilemma. Should he “*persist in this trial*” of these men for giving *aid and com-*

fort, the parties must be cleared on a plea to the jurisdiction, and the Governor himself takes these men "*out of the purview of the military commission,*" a court we do not understand, how composed we know not, by what authority convened we cannot learn. It seems to be a "pet" of the Governor, being recited in every document coming from the executive office and exhibited to the world. If the charge made by the Governor be *treason*, then we assert, he becomes the *evil disposed* person who would take his victims out of that purview. For though the constitution may be *obsolete* in this territory, it cannot be forgotten that it does clearly establish the tribunal by which such offences *must* be tried, and guarantees to the party charged therewith, a trial by a jury of *twelve of his peers* from the district wherein the overt act was committed, if such district be legally defined. We therefore maintain that Pierce County, in the Third Judicial District, was the proper venue of said action, and we charge upon Governor Stevens that if he had evidence of the guilt of these men, and broke up by force the only tribunal capable of trying them, and thus prevented their just punishment, he is guilty of a gross dereliction of duty, requiring the utmost censure, and so far as the effects thereof are concerned, cannot claim to be much better than an "*accessory after the fact.*"

Let us take now the other horn of the dilemma presented by the Governor's own vindication, and see how much better off he becomes. He converts them into a band of *spies*. Let us look at this a moment. Who is a spy? A spy is defined by an act of Congress as being an alien enemy. *He cannot be a citizen of the United States nor one owing allegiance thereto.* (*Vide vol. ii. Stat. at large, L. & B. ed., p. 371.*) Who are the parties arrested? The proclamation and vindication calls them "*persons resident in Pierce County.*" Did they not owe allegiance to the United States? Can a man living on his own farm be a spy? What nonsense! But these men are voters, all of them—qualified electors! Some of them have held, and are now holding responsible county offices. Several, if not all, have completed their naturalization. About their allegiance being due to the United States, there is not a shadow of a doubt. If guilty as charged, they cannot be *spies*; they must be traitors. We cannot better illustrate this position than by citing the case of Elijah Clark, the spy, which, see 3d vol. Niles' Register, p. 294, et seq. The facts of that case are briefly, that Elijah Clark was tried at a General Court Martial, convened at Buffalo, in August, 1812. He was convicted of being a spy and sentenced to be hung. In the progress of the trial it appeared that Clark was a native born citizen of the United

States, though then residing in Canada. Maj. Gen. Hall declined to approve the sentence of the court martial, "until the pleasure of the President of the United States can be known thereon."

James Madison, one of the distinguished authors of our National Constitution, was then the President, and his opinion on the question submitted to him, was as follows:

OPINION OF THE PRESIDENT.

WAR DEPARTMENT, October 20, 1812.

SIR:—The proceedings and sentence of the General Court Martial, which was held in the case of Elijah Clark, conformable to your orders of the 1st of August last, and which were by you transmitted to this department, have been received and laid before the President. I have now the honor to inform you that said Clark being considered a citizen of the United States, *and not liable to be tried by a Court Martial as a spy*, the President is pleased to direct that unless he should be arraigned by the Civil Court for treason, or a minor crime, under the laws of the State of New York, *he must be discharged*.

Very respectfully, I have the honor to be, sir,

Your obedient servant,

W. EUSTIS.

MAJ. GEN. A. HALL, Niagara.

So much for the question as presented by the Governor. Take either of his positions, and he clearly defeats the object for which he pretends to have issued his proclamation. Let us now inquire into the character of the jurisdiction *over persons*, under martial law when legitimately in force. What is martial law? It is the code established for the government of the army and navy of the United States. (*Vide Bouvier's Law Dict., vol. ii. p. 10, Tit. Law, Martial.*) Who are amenable to it? 1. The army and navy of the United States. 2. The militia when called into actual service. A private citizen is not amenable to martial law. His arrest and trial by the military power is trespass. The doctrine is thus laid down in Bouvier, vol. ii. p. 10, under Tit. Law, Martial. "A military commander has not the power by declaring a district to be under martial law, *to subject all the citizens to that code.*" And cites 7 Mart. (Lo.) 531; Hale's Hist. C. L. 31; 1 Bl. Com. 413; Tytler on Military Law; Ho. on C. M.; McArthur's on C. M.; Rules and Articles of War, Art. 64, et seq.; 2 Story's Laws U. S. 1000.

And the question is fully and ably discussed, in the case of *Smith vs. Shaw*, 12 Johnson's Reps. p. 257, et seq. Smith, plaintiff in error, appealed from a judgment of damages in the court below, given under the following circumstances. Smith, the defendant below, was an officer of the army, in command at Sacket's Harbor, and held in custody Shaw, who brought an action of damages for trespass. Smith pleaded in justification, that Shaw was a spy lurking about camp, and as such was committed by the provost guard, and that said offence was cognizable by a court martial. The Chief Justice in giving the opinion of the Supreme Court, affirming the judgment of the court below, said—"None of the offences charged against Shaw were cognizable by a court martial, except that which related to his being a spy, *and, if he was an American citizen*, he could not be charged with such an offence. He might be amenable to the civil law for treason, but could not be punished under martial law as a spy. There was, therefore, a want of jurisdiction either of the person or of the subject matter, as to all the offences alleged against the plaintiff. That want of jurisdiction renders the proceedings void, and makes the parties procuring them all trespassers." Here, then, the principle is established, that a citizen cannot be amenable to martial or military law, without he is legitimately under its jurisdiction, and an arrest by a military officer of a citizen is a trespass. It is not our province to say that Governor Stevens might not have exercised the right as commander-in-chief of the militia of this territory to have called out said militia, and made them amenable to law; but, failing to do that, his assumed title of commander-in-chief, carried with it no justification for the gross outrages and trespasses upon private rights, of which he has been guilty in this territory.

We may be permitted to sum up the grievances to which the people of this territory have been subjected, by the acts of its present Executive. In doing so we cannot fail to observe the peculiar similarity of them with several of the grievances recited as good cause for redress, when George III. imposed them on the Thirteen Colonies.

Was it true in 1776, as Jefferson wrote, "when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty" to repudiate such government. Can an American deny the sacred justice of that war which was waged, among other reasons, because a despot "deprived us in many cases, of the benefits of trial by jury. Obstructed the administration of justice, erected a multitude of new offices, and

called hither swarms of officers to harass our people and eat out their substance, affected to render the military independent of, and superior to the civil power—took away our charters, (and what better charter than the right to habeas corpus?) abolished our most valuable laws, and altered fundamentally the form of our government.”

Has eighty years growth and vigor, secured by the maintenance of the truths of that sublime instrument, taught us, the descendants of those great missionaries of civil and constitutional freedom, that the people have no rights, that absoluteism and despotism are again to prevail, and every thing peculiar to American institutions at once be blotted from our national character?

In conclusion, a sense of duty we own to Chief Justice Edward Lander, who has twice been taken into that most offensive of all styles of arrest, that of being forced to yield, in the exercise of his judicial functions to an armed force, prompts us again to tender our sympathies. He has done every thing he could to maintain the supremacy of the law, and the dignity of the bench. Yielding only when overwhelmed by the soldiery of the Executive, his last judicial acts have been to order the punishment due to such outlaws, for their contempt in invading the halls of justice, to protest firmly against the despotism of a petty military tyrant, *whose day is now*. We fearlessly make the issue on this great question, and we implore the national government to redress our grievances and shield us from the despotism under which we live. Our courts are powerless, private rights are at an end, the constitution is subverted, civil process is paralyzed, to ask for process guaranteed us by law, is cause for arrest, the highest judicial functionary of our territory is now a prisoner, because he dared to issue a writ of habeas corpus at the petition of five of Governor Stevens' victims.

Can this document better end than by asserting to the world, that our territory is now in such a condition, that soldiers are not needed to fight an enemy, but their leisure is devoted to interrupting courts of justice, becoming jailors to judges and clerks thereof, who but perform their legitimate public duty. Such is the “great OVERRULING PUBLIC NECESSITY” *justifying the proclamation of martial law*.

W. H. WALLACE,
ELWOOD EVANS,
B. F. KENDELL,

C. C. HEWITT,
FRANK CLARK.

PROCEEDINGS

OF THE

MEETING OF THE BAR, THIRD JUDICIAL DISTRICT,

WASHINGTON TERRITORY,

ON THE ARREST OF THE

Hon. Edward Lander, Chief Justice of said Territory, and
John M. Chapman, Clerk of the District Court,

BY AN ARMED FORCE,

UNDER ORDERS OF

GOVERNOR ISAAC I. STEVENS.

TOGETHER WITH THE

PROCEEDINGS OF A MASS MEETING OF CITIZENS OF PIERCE CO., W. T.



STEILACOOM, MAY 7, 1856.

NOTE.

On the 7th day of May, 1856, the Hon. Edward Lander, Chief Justice of Washington Territory, and John M. Chapman, Esq., the Clerk of the District Court of the United States of the Third Judicial District, were forcibly arrested in the Court House at Steilacoom, W. T., while engaged in holding a United States District Court for the County of Pierce, by a volunteer force, acting under instructions from Gov. I. I. Stevens, and carried under guard to Olympia, the seat of the Territorial Government.

MEETING OF THE BAR.

Immediately upon the removal of Hon. Edward Lander and J. M. Chapman, Esq., from the District Court Room, Col. William H. Wallace requested the members of the bar to remain. Those in attendance, consisting of Messrs. Wallace, Gibbs, Clark, Pease, Hewitt, Murden, Kendall and Evans, on motion organized by the appointment of William H. Wallace, Esq., chairman, and George Gibbs, secretary.

B. F. Kendall, Esq., being called upon, stated the objects of the meeting to be a consideration of the extraordinary proceedings of the arrest of the Judge and Clerk by an armed force, acting under instructions of Gov. Isaac I. Stevens, and under pretext of a proclamation of martial law over the county of Pierce. Mr. Kendall on the conclusion of his remarks, moved the appointment of a committee of three to draft resolutions expressive of the sense of the bar, at this outrage against law and judicial authority. The motion was adopted and Messrs. Gibbs, Evans and Pease, were placed upon said committee.

On motion, the chairman of the meeting was added to the committee, and the meeting then adjourned until 2, P. M., of the same day.

ADJOURNED MEETING.—Accordingly at 2, P. M., the members of the bar again met, when the chairman of the committee on resolutions, made the following report:

A meeting of the bar has devolved upon this committee the task of giving expression to the sentiments entertained by that body, of the gross outrage this day inflicted upon the court and bar of this district, by the exercise of military power over civil authority.

This day marks an era in the territorial history. For the first time in the annals of our country, does the exhibition present itself, of an armed force marching into a Court of Justice, and while the presiding Judge thereof is in the exercise of judicial authority, the court is overawed, its Judge taken from the bench, its Clerk arrested, the records seized, and they are removed by an armed force out of the county, in which by law, the court was to be held. In view of these circumstances, we deem it our solemn duty to make a statement of the facts, submitting it with confidence to the judgment of the world.

A war existing against Indian murderers and marauders in this territory, it would have been a subject of gratulation, if the gallant volunteers in its service had been employed in punishing those Indians, rather than in sustaining lawless violence, and in the infliction of outrages upon our courts and people. For so violent an assumption of power, we conceive that some little basis of reason should be found to justify it. But it becomes our duty to assert that no such reason exists, and that the proclamation of martial law was unnecessary, inexpedient, illegal and void: to sustain which declaration the following statement of facts is confidently relied upon. It is our wish to treat this subject, not in a spirit of excitement, although that would be fully justified by the circumstances, but with coolness and moderation. Satisfied as we are that the bare statement of the facts is sufficient, we need no appeal to passion or prejudice.

Several citizens of Pierce county, one of the most populous in the territory, who had been ordered in from their claims to the town of Steilacoom on suspicion of intercourse with the hostile Indians, and had subsequently returned to their homes, were arrested without process of law, in the latter part of March, by a force of volunteers acting under direction of Gov. Stevens, and having been first carried to Olympia, in the county of Thurston, were by the Governor remitted to the military post of Fort Steilacoom, with request to the commanding officer, to detain them on a charge of *treason*. Col. Casey having replied that he could not hold them in defiance of civil authority, and the persons arrested, having sent to the nearest Judge, who resided in Island county, a distance of about a hundred miles, for a writ of *habeas corpus*, Gov. Stevens on the 3d of April, issued a proclamation in the following words:

"Whereas, In the prosecution of the Indian war, circumstances have existed affording such grave cause of suspicion, that certain evil disposed persons of Pierce county have given aid and comfort to the enemy, as that they have been placed under arrest and ordered to be tried by a military commission: *And whereas*, efforts are now being made to withdraw, by civil process, these persons from the purview of the said commission.

"Therefore, as the war is now being actively prosecuted throughout nearly the whole of the said county, and great injury to the public, and the plans of the campaign be frustrated, if the alleged designs of these persons be not arrested, I, Isaac I. Stevens, Governor of the Territory of Washington, do hereby proclaim **MARTIAL LAW** over the said county of Pierce and do by these presents, suspend for the time being and till further notice, the functions of all civil officers in said county.

"Given under my hand at Olympia, this third day of April, eighteen hundred and fifty-six, and the year of Independence of the United States the eightieth.

"ISAAC I. STEVENS."

This document it will be observed, alleges no other motive, than that the persons so arrested, without warrant, and by the sole authority of military force, were about to sue out the great *writ of right*, to relieve themselves from illegal confinement.

It is to be observed, that there was at this time in the county of Pierce, three companies of United States troops, under command of a veteran and energetic officer. There were also one or more volunteer companies, engaged in scouting; the Indians had been driven from the settlements, to take refuge in the woods, and if any danger had ever existed, of communication between these persons and the enemy, it had ceased.

Following upon the heels of this extraordinary document, which was *without seal* and *without attestation*, which found no other publication than the transmission of written copies to a few military officers, the persons so charged were taken once more from the county of Pierce, and removed by a military guard to Olympia, out of the district where martial law had been proclaimed. Yet notwithstanding this removal of the suspected parties, the proclamation was continued in existence, and the volunteer officers directed to enforce it.

After a few days some of the persons so arrested, were permitted to return on their parole to Steilacoom, while the others were, and are still in custody at the seat of government, and, as is reported and believed are to be tried by a military commission of volunteer officers, to be held in Pierce county, on a charge of treason against the United States.

The United States Judge, assigned to this judicial district, being detained at home by severe illness, at the time when by law the term of the District Court was to be held, the Hon. Edward Lander, Chief Justice of this territory, who resides in the adjoining district, at the special written request of Hon. Judge Chenoweth, undertook to hold said court, and on Monday the 5th of May inst., arrived at Steilacoom, and opened the court in due form. Having been informed, however, on his way to the court by Lieut. Col. B. F. Shaw, commanding a volunteer force under authority of the Governor of this territory, that if he attempted to hold said court, he would be forcibly prevented, Judge Lander, in order to prevent a collision between the executive and judicial authority, suggested that he would simply open and adjourn the court until Wednesday, that the Governor might be advised to withdraw his proclamation.

About three days previous to opening court, Col. Shaw, commanding the volunteer forces, who had received written instructions from Gov. Stevens to enforce martial law until further orders, being directed at the same time to inform him immediately if in his opinion it was no longer necessary, had written by express to the Governor, stating that no occasion existed in the county for its continuance, informing him that important business was to be transacted before the court and recommended that in consequence, the proclamation be abrogated. Judge Lander now himself wrote to Governor Stevens, informing him of the course he had taken; that there were important causes to be tried before the court, one of which, the suit of the U. S. *vs.* The Former Collector of Puget Sound, ought to be tried; that there was imminent danger of a collision between the civil authorities and the military, and recommending that martial law be at once abrogated, especially as the present condition of the county seemed not to require it.

In reply, Governor Stevens on the 6th inst., while declining to withdraw his proclamation, suggested that Judge Lander adjourn his court to the first Monday in June, and informed him that he had examined the law, and found no difficulty in his adjourning from any time to the next term of court.

Upon the receipt of this information, Judge Lander, having done his duty as a citizen in endeavoring to prevent the expected collision, proceeded to fulfil those of his judicial office by opening court at the appointed time, accompanied by the Clerk, U. S. Deputy Marshal and Sheriff; he went to the court house, opened the court by proclamation in usual form, and caused the Grand Jury to be impaneled and sworn. During this time a company of volunteers, (many of them citizens of Oregon, although enrolled in this territory,) drawn from Clark county on the Columbia river, entered the court room with loaded rifles and drew up without the bar; another company was kept in reserve without, to assist them if necessary. Judge Lander then directed the deputy Marshal to prevent the entry of any armed men within the bar, but the commanding officer having announced that he acted under orders from Governor Stevens, directed his men to arrest the Judge and Clerk. In obedience to that order they entered the bar, the deputy Marshal being unable to prevent it, and arrested the Judge in his seat; the Judge stating that he only succumbed to force, and declined calling upon the *posse comitatus*, because he wished to avoid bloodshed. Judge Lander and the Clerk, J. M. Chapman, were then removed by the military from the court house, and on the same day taken out of the county and carried to

Olympia. The records of the court, which were at first seized, were subsequently returned to the deputy clerk.

During this time the citizens present, though manifesting a deep feeling of indignation at the transaction, refrained from any disorderly or violent acts. The conduct of Judge Lander was, throughout, dignified, firm and worthy of his high position, and was, we are satisfied, dictated only by a strict sense of duty.

Upon these facts the committee report the following resolutions:

Resolved, That we look upon the act this day perpetrated by an armed force under the authority of Gov. I. I. Stevens, in arresting the Judge and Clerk of this judicial district, as an outrage, which, if tamely submitted to, would be entirely subversive of our liberties.

Resolved, That as members of the bar, we solemnly protest against this assumption of power by the Executive—that the doctrines of our profession teach us that there is no warrant for such a procedure—that the course of the Executive is without a precedent in law or justice, and that it is a violation of every principle of constitutional privilege and liberty.

Resolved, That the proclamation of Gov. Stevens suspending the writ of *habeas corpus*, was an improper exercise of authority and a usurpation unheard of in the history of our country—that the right of *habeas corpus* is one of those dearest to our people, the right more powerfully protected by the National Constitution than any other, its suspension being an exercise of authority only conferred upon Congress with extreme restriction and not inherent in any officer in our national confederacy.

Resolved, That the Governor's proclamation in showing that certain parties were arrested on a charge of *treason*, in itself shows the necessity of a court of law for the trial of such prisoners—a military commission or court martial being incompetent to try men charged with such offences.

Resolved, That the peaceable manner of the citizens of Pierce county, in submitting quietly and without resistance to the outrages this day inflicted upon them, shows conclusively, that no necessity exists for martial law, no exigency requires it, no public necessity invokes its aid.

Resolved, That the judiciary of our country is the palladium of our best rights, that its protection from outrage, is one of the first duties of a public officer, its subversion a most despotic assumption of authority, that it is a separate branch of our institutions, independent of and not subservient to the *Executive*, and that the act of Gov. Stevens this day consummated, is a violent outrage upon law, and upon the rights of this people.

Resolved, That we unanimously tender to Chief Justice Lander

our sympathies on this trying occasion; that his manly course in holding the court until surrounded by an armed *posse*, and forcibly removed from the bench, merits our thanks: to him, to the Deputy U. S. Marshal, and to the Clerk, we tender our thanks for their zealous effort to protect the court house from invasion, and to maintain the dignity of the bench.

The report and resolutions were unanimously adopted, and on motion, the secretary of the meeting was instructed to forward a copy of the same to the President of the United States, our Delegate in Congress, the members of the Committees on Judiciary and Territories, of both Houses of Congress.

On motion, it was resolved, that the members of the bar participating in this meeting, express their concurrence by appending their signatures to these proceedings.

W. H. WALLACE, *ch'n*,
GEORGE GIBBS, *sec.*,
ELWOOD EVANS,
C. C. HEWITT,
FRANK CLARK,

B. F. KENDALL,
WILLIAM C. PEASE,
E. O. MURDEN,
H. A. GOLDSBOROUGH.

MASS MEETING.

A meeting of the citizens of Pierce county, Washington Territory, was held at the court house, in Steilacoom, on the seventh of May, 1856, to take into consideration the outrage committed by the Executive of this territory, upon the civil rights of its citizens. Thomas M. Chambers, Esq., was called to the chair. E. Schroter was chosen secretary, and E. M. Meeker assistant secretary.

On motion, W. H. Wallace spoke at some length, stating the object of the meeting to be the consideration of the outrage committed upon the civil rights of the people of this territory, by the violent and illegal seizure of the Chief Justice and the Clerk of the court of this territory, by the orders of the Executive.

On motion of J. M. Bachelder, George Gibbs, Esq., also stated in a brief and forcible manner his views on the same subject.

On motion, the chair appointed, Messrs. Samuel McCaw, R. S. Moore, Hugh Patterson, W. R. Downey and W. M. Kincaid, as a committee to draft resolutions, expressive of the sense of the meeting on the occasion. The committee reported the following resolutions:

Whereas, Isaac I. Stevens, Governor of Washington Territory, has proclaimed martial law over the county of Pierce in said territory, and has this day by an armed force interrupted the proceedings of the United States District Court by arresting the Judge and Clerk thereof, while in the legal discharge of the duties imposed upon them by their respective appointments, therefore

Be it Resolved, by the citizens of Pierce county, assembled, that in declaring martial law over this county in order to suspend the writ of *habeas corpus*, the Governor has violated the civil rights of the citizens, and trampled their dearest privileges under foot. That while nearly all the citizens of this county have volunteered and served faithfully in this war now being carried on against the Indians, we have seen no feeling manifested, that justified the assumption by the Executive of all civil law, and the suspension of all legal protection.

Resolved, That Chief Justice Lander, in the discharge of his official duties, has exhibited every disposition to avoid any collision between the Executive and Judicial authorities, consistent

with the position in which he was placed by the Executive of the United States, and his manly course has won our sympathy and regard.

Resolved, That in the seizure of the Chief Justice of this territory, while on the bench in the quiet discharge of his duties, we recognize a usurpation of authority unheard of in the annals of our free Republic, an indignity cast upon our courts of law, and upon a free people, ever holding themselves amenable to the civil authorities.

Resolved, That the tyrannical and despotic acts of the Executive of this territory, are such usurpations of law and authority as requires the interposition of the supreme authority of the United States; and that the Secretary of this meeting be directed to transmit copies of these resolutions to the President of the United States, to our Delegate in Congress, to the Committees on the Judiciary and on Territories in each house of Congress, with a request that they will take such action thereon as may protect the people of this territory from future usurpation, and in the exercise of their civil rights and personal liberties.

S. McCaw, *ch'n*,

WILLIAM M. KINCAID,

R. S. MOORE,

WILLIAM R. DOWNEY.

HUGH PATTERSON,

The resolutions were unanimously adopted and the meeting adjourned without day.

THOMAS M. CHAMBERS, *ch'n*.

E. SCHROTER, }
M. MEEKER, } *sec'ys*.

VINDICATION OF GOVERNOR STEVENS, FOR PROCLAIMING AND ENFORCING MARTIAL LAW IN PIERCE COUNTY, W. T.

The undersigned has had his attention called to a circular, expressing the views of the bar and of the citizens of Pierce county in regard to his recent action as executive of the territory, in proclaiming and enforcing martial law in Pierce county.

At a public meeting of the said bar and of the citizens, the course of the undersigned is pronounced despotic and unnecessary, and a solemn protest made against it as a most dangerous and unprecedented invasion of the rights of the judiciary, and as an act which called for the prompt interference and action of the national government.

The views of the said bar and citizens, as embodied in resolutions, are prefaced by a statement of the facts, going to show that there was scarcely even a pretence of a cause for the action of the Executive in suspending the functions of the court.

This contains not only palpable errors of fact, but the whole paper is highly colored, and is calculated to give a wrong impression of the actual condition of affairs in that county.

The undersigned deems it therefore due to the vindication of his own official action to present the reasons and facts, why in his judgment he was called upon by an overruling public necessity to proclaim and enforce martial law.

On the 3d day of April, 1856, martial law was proclaimed in and throughout Pierce county by the undersigned, for the reasons set forth in his proclamation, in these words:

"Whereas, in the prosecution of the Indian war, circumstances have existed affording such grave cause of suspicion, that certain evil disposed persons of Pierce county have given aid and comfort to the enemy, as that they have been placed under arrest and ordered to be tried by a military commission: *And whereas*, efforts are now being made to withdraw by civil process, these persons from the purview of the said commission;

"Therefore, as the war is now being actively prosecuted throughout nearly the whole of said county, and great injury to the public will result and the plans of the campaign be frustrated if the alleged designs of these persons be not averted, &c. &c."

What was the condition of the territory and of Pierce county at the time of issuing that proclamation, and what had been its condition for months previously ?

An Indian war had been raging, where neither age, sex or condition had been spared, whole families had been inhumanly massacred, alarm and consternation pervaded the whole territory. The settlers of the territory were in a state of siege, families living in block-houses with a few men, and a majority of the citizens in arms, actively pursuing the enemy in order to end the war.

There was, however, an exception as regards "certain evil disposed persons" of Pierce county. They remained in security on their claims, receiving the visits of the hostiles, furnishing them with provisions, giving them information, acting as their spies, and in every way furnishing them aid and comfort. These persons lived on the outskirts of the settlements, in positions where the Indians had easy access to them, and on the line where were the depots of the military operations, and which was the base of the military movements.

There is grave cause of belief not only that these persons fraternized with the hostiles, but that they were the main original cause of the war, and that at a meeting last Christmas, they determined to keep up the war, confident that they would be gainers by it.

All these are matters of public notoriety, and have been for many months. The attention of the undersigned was called to it, immediately on his return, by acting Governor Mason, who expressed the judgment, that at least they should be at once ordered in, and removed from the theatre of active operations.

His attention was afterwards called to it by that "veteran and energetic" officer, Lieutenant Col. Casey, commanding the military district of Puget Sound, and who had been informed by an Indian prisoner from Leschi's camp, that the movements of the troops had been communicated to Leschi by one of these "evil disposed persons."

The undersigned was unwilling to resort to harsh measures unless an imperious public necessity demanded it, and he limited his action to calling the attention of the military to those men, and to direct that they be carefully watched.

The murders of White and Northcraft decided what was his duty in the emergency. These murderers had their hiding places in the Nisqually bottom, and drew supplies from these "evil disposed persons." They were met and greeted by them in friendship, with the blood yet on their hands.

The undersigned accordingly determined to order them in as a

preliminary step, and to execute this duty, he secured the services of a most prudent and efficient man, Isaac W. Smith, Esq., the acting Secretary of the Territory.

The order was executed with kindness and moderation. Several days were allowed to take away their effects. They had the choice of residence, Olympia, Ft. Nisqually, or Steilacoom, and arrangements were made to furnish them with provisions.

So great was the public indignation at this time, that it was an indispensable measure of precaution, in order to protect the lives of these persons from the justice of an outraged community.

The arrest of these "evil disposed persons" had the most happy effect on the friendly Indians, who believed and knew that they had stirred up the war and confederated with the hostiles. The friendly Indians began to have confidence in an authority which treated *all* enemies as enemies, even though some had the skins of white men.

In defiance of these orders, these settlers returned to their claims, and re-established intercourse with the Indians. The military officers sent them in, stating that they had acted as spies and had paralyzed their operations.

Accordingly, they were sent to the station at Steilacoom under charges, and Lt. Col. Casey received them.

It may be asked here, how was it that these men were able to keep up intercourse with the hostiles under the circumstances.

These men have Indian wives and families, who have connexions in the hostile bands, fathers, brothers, and other near relatives, and so far as the undersigned is informed, they sympathize with them in the war. These "evil disposed persons" are mostly the retired servants of the foreign corporations in our midst, and they have a deadly antipathy to the dominant—that is the American power here.

In connection with these reasons of public necessity for proclaiming martial law, it will be pertinent to correct some of the mis-statements of the circular.

It is not true that Lt. Col. Casey refused to receive the prisoners. He did receive them, but when the writ of *habeus corpus* was about to be issued, and the undersigned in consequence proclaimed martial law, he asked to be relieved of their charge, doubting whether the proclamation could relieve him from the obligation of obeying the requisitions of the civil authority.

Nor is it true, as stated in the circular, that all the persons under charges were at Olympia; a portion were in Steilacoom, and all the remaining persons ordered in were either at Steilacoom, or Ft. Nisqually, within the limits of Pierce county.

Nor is it true, as stated in the circular, that the Indians have been so far subdued, as that these persons could not communi-

cate with them. The hostiles have infested the Nisqually bottom within the last fortnight, and they could have access to these settlers without much difficulty, whatever were the number of troops operating against them, unless each of these persons was under a constant guard, and his family under guard also.

These facts are well known to all persons acquainted with the topography of the country, and the situation of the claims of these persons.

Nor is it true that the proclamation was sent only to a few military officers. It was posted up publicly at Steilacoom, and was known to every citizen of the county.

When the undersigned learned that a writ of habeas corpus was about to issue to free these "evil disposed persons" from the power of the military, he determined to meet it by the proclamation of martial law.

The writ of habeas corpus could not only be issued in favor of the persons in confinement at the station near Steilacoom, but also in favor of those on parole at Nisqually, Steilacoom and Olympia. The result would have been to paralyze the military in their exertions to end the war, and to send into their midst a band of Indian spies and sympathizers. There would have been at once a conflict between them, and lives would have been lost.

It is true that since the proclamation of martial law a great change for the better has taken place in the condition of the war. Through the vigorous action of all the troops, regulars and volunteers, the Indians have been repeatedly struck, many have been killed and taken prisoners, and the hope is indulged that in a few weeks the war may be ended.

Yet every reflecting man must see that this is the critical period of the war, when it is to be determined whether the war can soon be ended, or whether the contest is to be continued another year. Within the last fortnight, houses and barns have been burned in the county of Thurston. The Indians have announced their determination to lay waste the settlements. Those east of the Cascades have declared they would transfer the war to the Sound, a measure to be apprehended in view of the known fact that they have had the services of one band of sixty men, commanded by the son of the Yakima chief, Owhi. It is no time for the nefarious practices of Indian spies and sympathizers.

At this critical stage, therefore, the undersigned learned with great surprise that the court was to be held by Chief Justice Lander: and he was the more astonished at the reasons given by the Chief Justice in a letter from him to the undersigned, which is referred to in the circular.

The undersigned had given, as the circular states, orders to

Lieut. Col. Shaw to examine the condition of things, and to advise him of the earliest practicable period it would be safe to revoke martial law.

The report of Col. Shaw was, that it was indispensably necessary to *enforce martial law*. A letter from him will accompany this paper, giving his reasons therefor.

The reasons of public necessity for holding the court, as set forth in the letter of Chief Justice Lander and in the circular, though they do not touch the principle of the case, need to be referred to as illustrative of the spirit of the whole transaction. It is said that one of the cases was a suit of the United States *vs.* The Former Collector of Puget Sound, and that it ought to be tried. Now this case was originally brought before the courts of Thurston county, and a change of venue was had to Pierce county, in Judge Chenoweth's district, on sworn affidavits that *Chief Justice Lander was prejudiced and would not try the case fairly. The other most important case was changed from Thurston to Pierce for the same reason.*

As to the danger of collision which is referred to, it may be said that the event showed no such danger. The armed force was small. A great portion of the citizens of Pierce county are in the field against the enemy, and are well advised of the necessity of the step taken by the executive.

The undersigned did unquestionably suggest to Chief Justice Lander the adjourning of the court till June, at which time it was believed the necessity for martial law would have passed away, and he did venture the expression of the opinion that the power thus to adjourn the court was fairly to be implied from the wording of the statute.

The undersigned having come to the conclusion that martial law was indispensable to protect the lives of the citizens, for the reasons set forth in this paper, determined to enforce it by the arrest of the Judge and Clerk, which was done with moderation and decorum by Lieut. Col. Shaw.

It is simply a question as to whether the executive has the power, in carrying on the war, to take a summary course with a dangerous band of emissaries, who have been the confederates of the Indians throughout, and by their exertions and sympathy can render, to a great extent, the military operations abortive. It is a question, as to whether the military power, or public committees of the citizens without law, as in California, shall see that justice is done in the case.

And he solemnly appeals to the same tribunals before which he has been arraigned in the circular, in vindication of his course, being assured that it ought and will be sustained as an

imperious necessity growing out of an almost unexampled condition of things.

ISAAC I. STEVENS,
Governor Territory of Washington.
Olympia, May 10, 1856.

HEAD QUARTERS, W. T. VOLUNTEERS, }
Olympia, W. T., May 10th, 1856. }
GOV. I. I. STEVENS,
Commander-in-Chief Volunteer Forces.

SIR:—I see by a printed circular issued at Steilacoom on the 7th inst., that the following statement is given as having been made by me:

“About three days previous to opening court, Col. Shaw commanding the volunteer forces, who had received written instructions from Gov. Stevens to enforce martial law, until further orders; being directed at the same time to inform him immediately, if in his opinion it would be no longer necessary, had written by express to the Governor, stating that no occasion existed in the county for its continuance—informing him that important business would be before the court, and recommended that in consequence the proclamation be abrogated.”

The reason that led the committee to make the statement is, that several days previous to the setting of the court above referred to, Geo. Gibbs, one of the members of the bar, came to me and desired me to write to you, stating that there was important business to come before the court. Upon his statement, I did preface a note to you, stating that martial law could be dispensed with.

But upon inquiry, I was convinced that there was a strong desire to arrest the prisoners which you had summoned before a military commission for trial, and being satisfied that if martial law was not enforced, and the prisoners tried before a military commission, that great injury would result to the public service, and the confidence of my troops destroyed, in consequence of men being at large, who men believe to be the worst enemies to American citizens, and the progress of the war.

I therefore concluded, that to serve the public good, martial law should be enforced, even if it should be to the inconvenience of a few citizens who had business before the court, and did not send the note first written, recommending that martial law be revoked, but recommending that it be enforced.

I am, sir, very respectfully,

Your most obedient,

B. F. SHAW.

Lieut. Col. Com. Right Wing W. T. Vol.

